

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KAREN JUCKETT, on behalf of K.J.,

Plaintiff,

v.

**1:09-CV-708
(FJS/VEB)**

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

APPEARANCES

OF COUNSEL

**IRWIN M. PORTNOY &
ASSOCIATES, P.C.**
542 Union Avenue
New Windsor, New York 12550
Attorneys for Plaintiff

IRWIN M. PORTNOY, ESQ.

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF REGIONAL COUNSEL
REGION II**
26 Federal Plaza - Room 3904
New York, New York 10278
Attorneys for Defendant

ROBERT R. SCHRIEVER, ESQ.

SCULLIN, Senior Judge

ORDER

On June 19, 2009, Plaintiff commenced this action seeking judicial review of Defendant's final decision denying benefits pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). *See* Dkt. No. 1. Defendant submitted his answer on October 5, 2009. *See* Dkt. No. 9. Plaintiff filed a brief and amended brief in support of her complaint on November 30, 2009, and Defendant filed his brief in opposition on January 14, 2010. *See* Dkt. Nos. 12-14. Plaintiff filed additional briefs in

support of her complaint on February 12, 2010, and February 22, 2010. *See* Dkt. Nos. 19-21. On June 29, 2011, Magistrate Judge Bianchini issued a Report and Recommendation, in which he recommended that the Court grant Plaintiff's motion for judgment on the pleadings, deny Defendant's motion for judgment on the pleadings, reverse Defendant's decision and remand the case to Defendant for the calculation of benefits. *See* Dkt. No. 24. Neither party filed any objections to this Report and Recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's motion for judgment on the pleadings is **GRANTED**; and the Court further

ORDERS that Defendant's motion for judgment on the pleadings is **DENIED**; and the Court further


ORDERS that Defendant's decision denying benefits is **REVERSED**; and the Court further

ORDERS that this case is remanded to Defendant, pursuant to sentence four of 42 U.S.C. § 405(g), for the calculation of benefits; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

IT IS SO ORDERED.

Dated: September 12, 2011
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge